



COMMISSION OF THE EUROPEAN COMMUNITIES

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**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to the second subparagraph of Article 251 (2) of the EC Treaty

concerning the

**common position of the Council on the adoption of an amended proposal for a
regulation of the European Parliament and of the Council
amending Council regulation (EEC) N° 95/93 of 18 January 1993 on common rules for
the allocation of slots at Community airports**

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1- BACKGROUND

Date of transmission of the proposal to the EP and the Council 22 June 2001.
(document COM(2001) 335 final-2001/0140(COD):

Date of the opinion of the European Economic and Social Committee: 20 March 2002.

Date of the opinion of the European Parliament, first reading: 11 June 2002.

Date of transmission of the amended proposal: 8 November 2002.

Date of adoption of the common position: 19 February 2004.

2- OBJECTIVE OF THE COMMISSION PROPOSAL

The Commission proposal aims at introducing more clarity and transparency to the current rules notably by taking away any ambiguity regarding the principles and the procedures of slot allocation, the status of the coordinator and the imposition of sanctions to prevent any abuse of slots that would further worsen the scarcity of slot capacity at congested Community airports.

To that end the Commission has built its proposal around the introduction of effectively transparent and equitable procedures. This affects in particular the definition of slot capacity available for allocation, the process of allocation and monitoring of the correct use of slots, which in turn affects the sanctions and the right to challenge the legality of the decisions of coordinators.

Clearly linked to the effectiveness of such a system is the status of the coordinator, who has to be truly independent from any vested interests and has to have the necessary financial resources to accomplish the tasks assigned to him/her by the Regulation. For the same reason the proposal intends to make sure that no party can unduly influence the coordination committee and its decisions. As the new rules reinforce the consultation and mediation functions of that committee, the proposal also requires that there is a clear separation of tasks between coordinator, coordination committee and Member State so as to avoid any conflict of

interests at any time in the allocation and monitoring procedure. Otherwise there is a risk that complaints are not properly handled and that coordinators are overly exposed to litigation.

Lastly, the Commission proposal aims at introducing a series of technical improvements in form of clearer definitions and priorities among the slot allocation criteria, in a balanced manner so as to maintain the level of undistorted competition, whilst maintaining the administrative character of the present system. To that end the Commission proposal provided for three things: a) introduced the possibility for incumbent air carriers to retime slots with historic priority (grandfather status) with certain conditions; b) in the absence of any transparent and non-discriminatory market based mechanism for accessing airports, it prohibited explicitly slot trading; c) in order to avoid the worsening of competitive conditions at particularly congested European airports, it required that slots exchanged between air carriers should be used, thus curbing slot trades dressed-up as slot exchanges.

3- COMMENTS ON THE COMMON POSITION

The Council made a number of changes to the Commission's initial and amended proposals that are acceptable because they would ensure its aims were met.

These changes concern mainly the technical aspects of slot allocation. The Common Position confirms the aim of the Commission proposal to modernise the slot allocation procedures by clarifying the terms used in the Regulation, setting high standards of independence and accountability of the slot coordinator, ensuring that the coordination committee remains independent from any party that may be concerned in cases of mediation and, finally, by providing for sanctions against the abusive use of slots.

With regard to market access aspects, the Common Position already contains certain improvements as far as the definition of “new entrant” air carriers and the priority given to such air carriers in the allocation of “pool” slots. Thus, on the basis of the Common Position, more air carriers than today will have the possibility to qualify for “new entrant” status; also, “new entrants” will have better possibilities for growth, as they will be given the possibility to have bigger slot portfolios than those allowed today.

Nevertheless, because the Council did not go as far as proposed by the Commission, particularly on the core question of false slot exchanges and the commercialisation of slots, the Commission made the following declaration to the Common Position:

« La Commission déplore que le Conseil n'ait pas pu se mettre d'accord sur un renforcement des disciplines pour la distribution des créneaux. C'est pourquoi, comme elle l'avait annoncé en faisant sa proposition, elle entend, en 2004, faire une seconde proposition portant spécifiquement sur cet aspect, afin de faciliter l'accès aux aéroports notamment les plus saturés et ainsi favoriser la concurrence ; cette seconde proposition s'appuiera sur l'étude en cours et une large consultation des acteurs concernés. La Commission s'attend à un examen rapide de cette proposition par les deux Institutions. »

In total the European Parliament proposed 52 amendments in the opinion it adopted on 10 June 2002. The Commission was able to accept 34 of them as such, in part or in principle. The Council was able to incorporate in principle or with redrafting 26 of the European Parliament's amendments accepted by the Commission. Furthermore, the Council was able to follow 6 amendments proposed by the European Parliament and rejected by the Commission.

In particular, the Council was able to endorse the objective of most of the amendments proposed by the European Parliament without necessarily using the same wording.

3.1 Amendments accepted by the Commission and incorporated in full or in part in the common position

The references below are to recitals and articles of the common position.

Recitals

Amendments 3, 4, 5 and 6, which are linked to recitals 5, 7, 8 and 9 respectively: the common position follows the text proposed in the Commission's amended proposal (COM(2002) 623 final of 7.11.2002) following the opinion of the European Parliament given in first reading.

Articles

Amendments 9 and 14 concern the definitions (article 2): the text of the common position differs from that proposed by the European Parliament in particular with regard to the definition of "new entrant". However, the Commission is able to accept the common position as the new text constitutes a legally clear provision and improves the competitive conditions at congested airports by giving more air carriers the possibility to qualify for "new entrant" status as well as to air carriers with bigger slot portfolios than those provided in the currently applicable rules.

Amendments 17 and 19 concern the conditions for airport coordination (article 3): the text of the common position follows the Commission's amended proposal as well as the text proposed by the European Parliament and rejected by the Commission (see below section 3.4).

Amendments 21 and 22 concern the status of the coordinator (article 4): the text of the common position follows the Commission's amended proposal echoing the European Parliament's position.

Amendment 24 concerns the coordination committee (article 5): the common position mirrors the text proposed by the European Parliament and accepted by the Commission.

Amendments 29 and 30 concern the information for schedules facilitators and coordinators (article 7): even though the text of the common position does not follow the Commission's amended proposal, the wording is clear and achieves the aims of the proposal, i.e. spells out clearly the obligation of air carriers to submit in due form and time to the coordinator the requested information to qualify for new entrant status.

Amendments 32, 33 and 36 concern the process of slot allocation (article 8): the common position goes further than the position of the Commission as expressed in its amended proposal and introduces greater flexibility for the retiming of slots allowing thus retiming not only for operational reasons but also when the retimed slots are closer to the slots initially requested.

Amendments 37, 39, 40 and 41 concern matters of slot mobility (article 8a): the common position reflects the amendments of the European Parliament and the Commission's amended proposal.

Amendment 42 concerns the exclusion of compensation claims (article 8b): the common position follows the text of the European Parliament and the Commission's amended proposal.

Amendment 44 concerns the slot "pool" (article 10) in particular article 10§4 and 5: the text of the common position goes even further than the Commission's amended proposal regarding exceptional circumstances, notably following the experiences of the events of 11 September 2001 and the effect that the war in Iraq and the outbreak of SARS have had on the use of slots at Community airports.

Amendments 47 and 48 concern the complaints and the right of appeal against the decisions of the coordinators (article 11): the text of the common position echoes the Commission's amended proposal. In particular, the text regarding the liability of coordinators has been fully endorsed.

Amendments 51 and 52 concern the sanctions (article 14): the text of the common position is acceptable, as even though it does not use the wording proposed by the Commission in its amended proposal it fully safeguards the aim of the provisions in question (paragraphs 4 and 5 – sanctions against abusive slot operations).

3.2 Amendments accepted by the Commission and not incorporated in the common position

Amendments 10, 11, 12, 13, and 16 concern the definitions (article 2 b) – "new entrant" and article 2 o) – "taxiing time"): as explained earlier, the common position followed rather the structure of the currently applicable definition of "new entrant" and instead of endorsing the percentage suggested by the Commission (7% of total number of slots available at the airport in question) and supported by the European Parliament was broken down to 5% and 4%. The Commission has been able to accept these percentages as they are higher than those provided in the current rules (3% and 2%). The notion of taxiing time was relevant for the imposition of sanctions; as the corresponding provision (article 14§1) has become optional, the Commission accepts that such definition does not appear necessary any more.

Amendment 27 concerns the coordination parameters (article 6): the text of the common position reflects the Commission's initial proposal, which was broader in scope (airspace congestion) than the amendment proposed by the European Parliament (local airspace congestion).

Amendment 31 concerns the possibility to restrict slot "entitlements" ("permissions") to series operated with a minimum aircraft size (article 8§2 last indent): the common position reflects the decision of the qualified majority not to include this provision in the present revision exercise as it is considered to be a market access measure.

Amendment 49 concerns the sanctions (article 14§1 - rejection of flight plan): the common position rendered the measure optional, making thus redundant the inclusion of "taxiing time".

3.3 Amendments rejected by the Commission and not incorporated in the common position

Recitals

Amendments 1 and 2 concern recitals 2 and 3 respectively: they would affect significantly the balanced approach of the proposal, which aims to ensure that all interests in the aviation sector (air carriers, airports and consumers) are duly considered.

Amendments 7 and 8 concern recitals 13 and 16 respectively: the common position accepts that the text proposed by the European Parliament would prejudice the outcome of the study on the introduction of a market mechanism and thus the content of a further revision of the slot allocation rules. Similarly, the common position does not accept that the coordinator should be exempted from liability in all cases, but as is clearly stipulated in article 11§2 (corresponding amendment: 48), the coordinator's liability is limited to cases of gross negligence and wilful misconduct.

Articles

Amendment 15 concerns the definition of “group of air carriers” (article 2 f) ii): the Council accepted that the amendment was lending itself to confusion with groundhandling services.

Amendments 25, 26 and 34 concern the functions and composition of the coordination committee (article 5): the text of the common position states clearly who can and who cannot be member of that committee and that it obligatorily draws its rules of procedure to ensure transparency. Text similar to amendment 26 has been inserted into recital 7.

Amendment 28 concerns the determination of coordination parameters (article 6§3): the Council accepted that the proposed amendment would broaden unduly the scope of application of the proposed measure (provision of information to interested parties).

Amendment 43 concerns the possibility to reserve slots for the operation of routes where a public service obligation has been imposed (article 9): the Council followed the Commission's amended proposal not to accept any restrictions of the right to reserve slots for the operation of such routes.

Amendment 46 concerns the possibility of new entrants to refuse slots within a certain limit of time (article 10§7): the common position reflects the Commission's amended proposal, which did not accept any restrictions to that measure.

Amendment 50 concerns the “return dates” for slots which air carriers are not going to use during the next scheduling season (article 14§2): the Council followed the Commission's amended proposal and did not accept to alter these dates, as this would disturb established international practice in the scheduling procedures.

3.4 Amendments rejected by the Commission and incorporated in the common position

Amendment 18 and 20 concern the determination of the airport capacity (article 3§§4 and 5): the common position follows the amendment of the European Parliament, whereby passengers' organisations are not consulted in this process as well as the possibility to designate an airport as “coordinated” for periods shorter than a full scheduling season.

Amendment 23 concerns the coordinator's status and functions (article 4§8): the common position strikes a balance between the Commission's proposal and the European Parliament's amendment by describing in a non-exhaustive manner those who are recognised as "interested parties".

Amendment 35 concerns the possibility to refuse slots for reasons of inter-modality (old article 8§6): the common position followed the opinion of the European Parliament and deleted the proposed provision.

Amendment 38 concerns one of the core issues of the proposed revision of the slot allocation rules, namely the prohibition of false slot exchanges (article 8a§1c and article 8a§3d): the common position followed the text proposed by the European Parliament and deleted this restriction from the present revision exercise.

Amendment 45 concerns the allocation of "pool" slots to new entrants (article 10§6): the common position introduces text, which even though does not completely reflect the text proposed by the European Parliament, stipulates clearly that slot requests from new entrants and incumbents shall be treated "fairly" so as not to unduly discriminate against any air carriers.

3.5 New provisions accepted by the Commission – not affected by any amendment

A number of provisions in the Commission proposal - not affected by any amendments from the European Parliament, have been changed by the Council. They concern the following issues:

- (1) The definition of "slot" (article 2a): the term "entitlement" has been considered as bearing prejudice on any further revision of the slot allocation rules and has therefore been replaced by the term "permission", which reflects technically the function performed by the coordinator.
- (2) The airport capacity analysis (article 3§3): the analysis is to be carried out not only by the managing body of the airport but also "by any other competent body".
- (3) The prohibition of slot trading (article 8a§2): the Council considered that this is an issue, which clearly affects market access, and therefore excluded it from the present revision exercise. The Commission finally accepted this exclusion; however it presented the declaration referred to above.
- (4) As a reaction to recent difficulties in the airline sector, the common position foresees by means of a derogation from the rules provided for in article 8a§3, that slots previously operated by new entrants can be transferred in the case of legally authorised takeovers of the activity of bankrupt undertakings.
- (5) Complaints (article 11§1) are to be dealt within an overall shorter period of time (three months) than the one proposed by the Commission (minimum three months).
- (6) Sanctions: the withdrawal of flight plans for operations "without a slot" is rendered optional (article 14§1). Pecuniary penalties (article 14§5) are by the standard reference to be "effective, proportionate and dissuasive sanctions or equivalent measures".

- (7) In view of the specific requirements to put in place procedures for the judicial review of decisions of coordinators and sanctions, articles 11§2 and 14§5 are to enter into force 12 months after the publication of the Regulation, whereas the rest of the proposal is to enter into force three months after its publication.

4- CONCLUSION

For the reasons explained above, the Commission considers that the common position adopted on 19 February 2004 by qualified majority is acceptable and thus can support it.